IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) F.A.O. No.868 of 2006

...

Ranjit and others .

..... Appellants

Versus

Mohinder and others.

..... Respondents

(2) F.A.O. No.869 of 2006

...

Smt.Jeeyo.

..... Appellant

Versus

Mohinder and others.

..... Respondents

(3) F.A.O. No.870 of 2006

...

Maya.

..... Appellant

Versus

Mohinder and others.

..... Respondents

(4) F.A.O. No.871 of 2006

...

Subhash and others.

..... Appellants

Versus

Mohinder and others.

..... Respondents

(5) F.A.O. No.872 of 2006

...

Dharampal.

..... Appellant

Versus

Mohinder and others.

..... Respondents

(6) F.A.O. No.873 of 2006

...

Mahabir and another.

..... Appellants

Versus

Mohinder and others.

..... Respondents

(7) F.A.O. No.874 of 2006

...

Mehar Singh alias RamMehar and others.

..... Appellants

Versus

Mohinder and others.

..... Respondents

(8) F.A.O. No.875 of 2006

...

Saroj Bala.

..... Appellant

Versus

Mohinder and others.

..... Respondents

(9) F.A.O. No.877 of 2006

...

Zile Singh and others.

..... Appellants

Versus

Mohinder and others.

..... Respondents

(10) F.A.O. No.878 of 2006

...

Arya Kumar.

..... Appellant

Versus

Mohinder and others.

..... Respondents

(11) F.A.O. No.879 of 2006

...

Sukhvinder and others.

..... Appellants

Versus

Mohinder and others.

..... Respondents

(12) F.A.O. No.880 of 2006

...

Zile Singh.

..... Appellant

Versus

Mohinder and others.

..... Respondents

(13) F.A.O. No.881 of 2006

...

Smt.Murti.

..... Appellant

Versus

Mohinder and others.

..... Respondents

(14) F.A.O. No.882 of 2006

...

Ashok Kumar.

..... Appellant

Versus

Mohinder and others.

..... Respondents

(15) F.A.O. No.883 of 2006

...

Mewa.

..... Appellant

Versus

Mohinder and others.

..... Respondents

Date of Decision: 31.08.2006

CORAM : Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Pritam Saini, Advocate for the appellants.
Ms.Vandanaa Malhotra, Advocate for respondent no.2,
Shri Sanjiv Malik, Advocate for respondent nos. 3 and 4,
Shri Pradeep Goyal, Advocate for respondent no.5,
in all the appeals.

....

Mahesh Grover,J.

This judgment shall dispose off the above mentioned appeals as they arise out of a common award dated 15.9.2005 passed by the Presiding Officer, Motor Accident Claims Tribunal, Panipat (hereinafter described as `the Tribunal').

On 2.10.2000 at about 6.00 P.M., a head-on collision is said to have taken place between Truck No.HR-38-2379 and Canter No.HR-39-0182 causing death of Smt.Shanti wife of Hari Ram, Smt.Sarti wife of Amar Singh, Smt.Rajo wife of Ram Mehar, Smt.Rajo wife of Mahabir, Smt. Rajpati @ Rajo wife of Jagan, Smt.Bhateri wife of Ranjit, Smt.Kalawati wife of Banarasi, Smt.Phoolo Devi wife of Bihari Lal and Karambir, while causing injuries to Kaptan Singh son of Phool Singh, Smt.Jeeyo wife of Bhale Ram, Smt.Maya Devi wife of Prem Singh, Smt.Saroj Bala wife of Ashok, Subhash son of Hari Ram, Smt.Murti wife of Dara, Ashok Kumar son of Hari Ram, Smt.Bala wife of Ran Singh and Smt.Mewa wife of Subhash. All these persons along with some others were returning in the

canter in question to their village after attending a Shok Sabha of Smt.Sunil, who had passed away. The accident between the two vehicles was stated to be so intense that the body of the canter separated from its front portion and all the passengers travelling therein were crushed under it resulting in death of few and multiple injuries to others. The driver of the truck also died at the spot.

As many as twenty one claim petitions were filed by the injured persons and the legal representatives of the deceased, as also the owner of the canter claiming compensation against the owner and the insurer of the offending truck. The owner, driver and insurer of the canter were also impleaded as respondents in some of the claim petitions, whereas the legal representatives of the truck driver were also made parties in three of them.

The Tribunal, while answering all the claim petitions by a consolidated award, held that the accident had taken place as a result of rash and negligent driving of the offending truck by its driver and accordingly, awarded different amounts as compensation to the claimants including the owner of the canter for damages caused to his vehicle.

The finding of the Tribunal qua the negligence of the driver of the truck in causing the accident has not been assailed by any of the affected parties.

In the instant appeals by the claimants, a grievance regarding inadequacy of compensation awarded has been made.

For the sake of convenience and clarity, every appeal shall be answered by way of separate discussion which is as follows:-

F.A.O.No.868 of 2006

This appeal arises out of claim petition no.91 of 2005 filed by

Ranjit and his four minor daughters and one minor son on account of death of Smt.Bhateri in the said accident.

The Tribunal assessed the income of the deceased as Rs.2400/- per month being the minimum wages of an unskilled worker and deducted 1/3rd of her income on account of her personal expenses. The dependency per month was accordingly assessed at Rs.1600/- and a multiplier of `16' was adopted to arrive at a figure of Rs.3,07,200/-. Rs.10,000/- were awarded on account of funeral expenses and the claimants were held entitled to a total compensation of Rs.3,17,200/-.

Shri Pritam Saini, learned counsel for the appellants placed reliance on the judgment of the Apex Court in Lata Wadhawa Versus State of Bihar, 2001(8) S.C.C. 197 to contend that the deceased was a house-wife between the age group of 35 to 40 years and according to the observations made by their Lordships in the said judgment, the contribution of the house wives of that age group to the family income should be taken as Rs.36000/- per annum.

On the other hand, Ms.Vandana Malhotra, learned counsel for the Insurance Company sought to distinguish the law laid down in Lata Wadhawa's case (supra) on the ground that the observations of the Supreme Court were made in a writ petition and the same did not pertain to a motor vehicular accident.

We have considered the contentions of the learned counsel for the parties and are of the opinion that the law laid down in Lata Wadhwa's case (supra) is not attracted to the facts of the present case. The observations were made in that case pursuant to a writ petition having been filed before the Supreme Court and the case pertained to deaths and injuries

caused on account of a fire. It was not a case of vehicular accident and so, in our opinion, the observations made therein cannot be strictly applied. Besides, the status of the parties, who were affected by the incident is also not reflected in the aforesaid judgment. In view of this, we have no option but to explore and determine the adequacy of the compensation awarded to the claimants-appellants in the light of the settled principles of law in respect of a vehicular accident based on preponderance of probabilities.

Smt.Bhateri, at the time of her death, was between 35 to 40 years of age. She is survived by as many as six claimants, out of whom five are minor children including four minor daughters. Therefore, in our opinion, the amount of dependency which has been arrived at after imposing deduction of 1/3rd from the income of the deceased is not justified. A mother, who is confronted with a family in which there are many mouths to feed would normally not be spending so much on herself. It would be appropriate if in the circumstances of the case, 1/5th of the income is deducted for her personal expenses. Thus, the dependency would work out at Rs.1900/- per month which comes to Rs.22800/- per annum. The multiplier of `16' has been applied correctly and, therefore, the compensation is assessed at Rs.3,64,800/-. The amount of Rs.10,000/- which has been awarded on account of funeral expenses is also just and adequate. However, the minors have been deprived of the natural love and affection of their mother which is very valuable consideration so far as they are concerned. Therefore, an amount of Rs.10,000/- each to the minor children is further awarded on account of loss of love and affection. In this manner, total amount of compensation comes to Rs.4,24,800/-, which is rounded off to Rs.4,25,000/-. The claimants shall be entitled to the enhanced

amount in equal shares along with interest at the rate of 6% per annum from the date of claim petition till realisation. The husband of the deceased shall be entitled to a compensation of Rs.75,000/- while the minors shall be entitled to Rs.70,000/- each. The shares of the minors shall be deposited with any nationalised/ scheduled bank allowing maximum rate of interest and the same shall be payable on their attaining majority.

F.A.O.No.869 of 2006

Smt.Jeeyo, who filed claim petition no.161 of 2005 on account of injuries suffered by her, has been awarded a sum of Rs.15000/- in lump-sum by the Tribunal. She has filed this appeal for enhancement of the compensation. As per the discussion contained in the impugned award, she had received a fracture of ulna which took two to three months to heal.

Although no permanent disability is shown to have been suffered by the appellant, yet, keeping in view the fact that she suffered for two to three months on account of the injuries sustained by her, it would be just and appropriate to grant her a sum of Rs.25,000/- in all. Ordered accordingly.

F.A.O. No.870 of 2006

Appellant-Smt.Maya had filed claim petition no.162 of 2005 claiming compensation on account of injuries alleged to have been suffered by her in the accident. However, the Tribunal did not find any ground to award any compensation to her as she failed to establish on record the nature of injuries or the medical expenses incurred by her.

The present appeal has been filed by the appellant challenging the finding of the Tribunal. However, we do not find any thing on record which could persuade us to take a view contrary to the one taken by the

Tribunal. There is, thus, no reason to interfere with the impugned award qua the appellant.

F.A.O.No.871 of 2006

This appeal emanates from claim petition no.163 of 2005 which was filed by Hari Ram and others seeking compensation on account of death of Smt.Shanti. The claimants were the husband and minor son. During the pendency of the claim petition, Hari Ram is said to have died and his three other sons were impleaded as legal representatives. All of them are stated to be majors.

The Tribunal awarded a sum of Rs.50,000/- as compensation to the claimants under Section 140 of the Motor Vehicles Act,1988 (for short, `the Act') as they failed to prove the age and avocation of the deceased.

In our opinion, although the age of the deceased was not established on record by leading cogent evidence, yet, the fact that she was survived by as many as three sons, who are major, it can safely be inferred that she would be in the age group of 50 to 59 years. The deceased was also survived by one minor son. So far as the income of the deceased is concerned, it is to be assessed keeping in view the income of an unskilled worker, i.e., Rs.2400/- per month. By deducting 1/3rd amount as her personal expenses, the dependency would work out to Rs.1600/- per month and Rs.19200/- per annum. Keeping in view the age of the deceased, the multiplier of `10', in our opinion, would be appropriate. Therefore, the compensation comes to Rs.1,92,000/-. In addition, a sum of Rs.10,000/- deserves to be awarded on account of funeral expenses. The minor son of the deceased is also held entitled to receive a sum of Rs.10,000/- on account

of love and affection of his mother. Thus, the total compensation works out to be Rs.2,12,000/-.There is nothing on record that the major sons were dependent upon the deceased. Accordingly, it would be in the fitness of things if an amount of Rs.1,50,000/- is deposited in any nationalised/ scheduled bank in the name of the minor claimant-appellant and rest of the amount is given to the other claimants-appellants in equal shares. It is so directed.

F.A.O.No.872 of 2006

Appellant- Dharampal had filed claim petition no.164 of 2005 for award of compensation on account of death of his mother-Smt.Sarti, aged 60 years, in the accident in question. The Tribunal had taken the income of the deceased as Rs.2400/- per month and after deducting 1/3rd for her personal expenses, it assessed the monthly dependency at Rs.1600/-. By applying the multiplier of `5', an amount of Rs.96000/- was awarded as compensation. Besides, a sum of Rs.10,000/- was allowed as funeral expenses.

In our opinion, the mode of assessment as adopted by the Tribunal is fairly adequate and does not require any interference.

F.A.O.No.873 of 2006

Mahabir and Shish Pal filed claim petition no.165 of 2005 seeking compensation on account of death of Smt.Rajo. The deceased was stated to be 35 years of age. The claimants-appellants are her husband and adopted son. The Tribunal had assessed the income of the deceased as Rs.2400/- per month and had deducted 1/3rd therefrom on account of personal expenses. Taking the dependency at Rs.1600/- per month and applying the multiplier of `16', a sum of Rs.3,07,200/- was awarded as

compensation. Besides, the claimants-appellants were held entitled to a sum of Rs.10,000/- on account of funeral expenses.

In our opinion, the amount of compensation awarded by the Tribunal is just and adequate as the deceased was survived only by her husband and an adopted son. However, in the circumstances of the case, we determine the share of the minor to be Rs.two lacs and direct that the share of the minor son would be deposited in a nationalised/scheduled bank and would be payable on his attaining the age of majority. Rest of the amount shall be paid to the husband of the deceased.

F.A.O.No.874 of 2006

Mehar Singh alias Ram Mehar and his four minor children preferred claim petition no.166 of 2005 and sought compensation for the death of Smt.Rajo in the accident in question. The deceased was 30 years of age at the time of her death. The Tribunal had assessed the income of the deceased as Rs.2400/- per month by placing her at par with an unskilled worker. 1/3rd of the income was deducted for her personal expenses and the dependency was assessed at Rs.1600/- per month. A multiplier of `17" was adopted to arrive at a figure of Rs.3,26,400/-. Rs.10,000/- were allowed as funeral expenses and a total compensation of Rs.3,36,400/- was ordered to be paid to the appellants.

In our opinion, the compensation awarded to the appellants is just and adequate in view of the fact that there was no specific proof of age and income of the deceased. The Tribunal had apportioned the amount of compensation awarded to the claimants-appellants in equal shares. We, however, feel that appellant-Mehar Singh should be given Rs.one lac out of the compensation awarded and the rest of the amount be apportioned

equally amongst minors, which amount shall be kept in fixed deposits as already directed by the Tribunal.

F.A.O.No.875 of 2006

This appeal has been preferred by the injured-claimant, who had suffered 35% disability as a result of the injuries sustained by her in the accident and who had filed claim petition no.167 of 2005. The appellant had suffered fracture of right clavicle, fracture of radius lower and fracture of fibula. She was hospitalised for a period of 15 days. The Tribunal assessed the compensation to be payable to her at Rs.15,000/- for medical bills and other treatment; Rs.70,000/- on account of loss of earnings and Rs.20,000/- for pains and sufferings. Thus, a total sum of Rs.1,05,000/- as been awarded on account of the injuries referred to above.

In our opinion, the compensation awarded to the appellant is inadequate, in-as-much as, only Rs.15000/- has been awarded to her on account of medical and other expenses. Even though, no medical bills have been produced by the appellant, yet, taking into consideration the nature of injuries, it would be safe to say that the appellant would have spent at least a sum of Rs.25000/- on account of medical treatment. In addition, a sum of Rs.5000/- is awarded to the appellant on account of expenses on special diet. The injured-claimant was a young woman of 24-25 years of age and was a labourer. With 35% disability, her earning capacity would have been impaired and she is likely to suffer this infirmity for the entire life. Therefore, the amount under the head of pains and sufferings deserves to be enhanced from Rs.20,000/- to Rs.40,000/-. As a result, the appellant is held entitled to compensation of Rs.1,40,000/-. The enhanced amount of compensation shall be payable to the appellant along with interest at the rate

of 6% per annum from the date of petition till realisation.

F.A.O.N.877 of 2006

Zile Singh along with his minor sons and daughter filed claim petition no.169 of 2005 seeking compensation on account of death of his wife, Rajpati alias Rajo on the accident in question. The Tribunal came to the conclusion that the deceased was 34 to 35 years of age and accordingly, it assessed her income as Rs.2400/- per month by treating her at par with an unskilled labourer. 1/3rd of the income was deducted for her personal expenses and the dependency was assessed as Rs.1600/- per month. A multiplier of `17' was applied and the compensation was worked out at Rs.3,26,400/-. Additionally, an amount of Rs.10,000/- was awarded on account of funeral expenses.

After hearing the learned counsel for the parties, we are of the considered view that the compensation deserves to be enhanced as the deceased was survived by her husband and three minor children. Therefore, the deduction ought to have been 1/4th instead of 1/3rd. Thus, the annual dependency comes to Rs.21600/- (Rs.1800/- per month x 12). The multiplier of `17', in the circumstances of the case, appears to be just. Accordingly, the compensation works out to be Rs.3,67,200/-. The funeral expenses of Rs.10,000/-, as awarded by the Tribunal, appear adequate. In addition, the minor children are held entitled to Rs.10,000/- each on account of loss of love and affection of their mother. In this way, the total compensation comes to Rs.4,07,200/- to which the appellants are held entitled in equal shares. The appellants shall be entitled to the enhanced amount of compensation along with interest at the rate of 6% per annum. The shares

of the minors, i.e., Rs.1,00,000/- each shall be kept in a fixed deposit with any nationalised/ scheduled bank and the same shall be payable on their attaining majority.

F.A.O.No.878 of 2006

Appellant-Arya Kumar filed claim petition no.170 of 2005 and sought compensation on account of death of his mother-Smt.Bhateri, who was about 60 years old and who lost her life in the said accident. It was averred that she was earning Rs.5000/- per month, but the Tribunal disbelieved this averment and assessed the income of the deceased as Rs.2400/- per month at par with that of an unskilled worker. After deducting 1/3rd of the income for her personal expenses, the monthly dependency was taken as Rs.1600/- and by applying the multiplier of `5' in accordance with the Second Schedule of Section 163-A of the Act, the compensation was assessed to be Rs.96,000/-. Besides, Rs.10,000/- were awarded as funeral expenses.

Keeping in views the age and income of the deceased, in our opinion, the compensation awarded to the appellant is just and adequate and the impugned award qua him does not warrant any interference specially in view of the fact that he is major and would be earning in his own individual capacity as well.

F.A.O.No.879 of 2006

This appeal arises out of claim petition no.171 of 2005 which was filed by Banarsi and five minor children for award of compensation on account of death of Smt.Kalawati in the accident. During the proceedings, Banarsi and one minor daughter-Seema died. (However, Seema's name appears in the memo of parties as one of the appellants, which needs

correction). The Tribunal had come to the conclusion that the deceased was approximately 45 years of age and had assessed her income as Rs.2400/- per month keeping her at par with an unskilled worker. The monthly dependency was assessed at Rs.1600/- after making deduction of 1/3rd for her personal expenses. A multiplier of `13' was adopted and a compensation of Rs.2,49,600/- was awarded. An additional amount of Rs.10,000/- was allowed for funeral expenses. In this manner, the claimants were held entitled to a sum of Rs.2,59,600/-.

After hearing the learned counsel for the parties, we are of the opinion that the award of the Tribunal qua the appellants deserves to be modified. Even though, it has been stated that the deceased had left behind nine sons and daughters, but the claim petition was preferred by the husband and five minor children. The Tribunal had deducted 1/3rd from the income of the deceased on account of her personal expenses. Keeping in view the fact that the deceased has left behind numerous heirs, it would be just and appropriate if the dependency is assessed by deducting 1/5th of the income for personal expenses (1/5th of Rs.2400/- comes to Rs.480/- or say, Rs.500/-). Thus, the annual dependency comes to Rs.22800/-. The multiplier of `13', in our opinion, is adequate and, therefore, the compensation works out at Rs.2,96,400/-. The amount of Rs.10,000/- awarded on account of funeral expenses is just and proper. In addition, a sum of Rs.10,000/-is allowed to each of the appellants, who are minors, on account of loss of love and affection of their mother. The appellants shall be entitled to the enhanced amount of compensation along with interest at the rate of 6% per annum from the date of the petition till realisation in equal shares. All the appellants in this appeal are minor. Therefore, The amount

of compensation shall be kept in their names in a fixed deposit with any nationalised/ scheduled bank till they attain the majority.

F.A.O.No.880 of 2006

Zile Singh, who lost his son, aged 7 years, in the accident, filed claim petition no.172 of 2006 and sought compensation. The Tribunal awarded a sum of Rs.90,000/- in all as compensation. Rs.30,000/- were given on account of expenses incurred on treatment before the minor son died and Rs.50,000/- were allowed under the provisions of Section 140 of the Act, whereas Rs.10,000/- were awarded for funeral expenses.

In our opinion, the amount of compensation awarded by the Tribunal is just and adequate and the impugned award qua the appellant does not warrant interference.

F.A.O.No.881 of 2006

Appellant-Smt.Murti, who received injuries in the accident, filed claim petition no.173 of 2005 and the Tribunal awarded a total sum of Rs.8000/- as compensation in lump-sum to her. It was found that the appellant failed to establish the nature of injuries. She had, however, brought on record medical bills to the tune of Rs.4824/-.

The perusal of the record shows that there is absolutely no evidence to show that the appellant had received any serious injuries which could have resulted in any permanent disability. In our opinion, the compensation awarded by the Tribunal is just and adequate and no interference in the impugned award qua the appellant is warranted.

F.A.O.No.882 of 2006

Appellant-Ashok Kumar sustained injuries on different parts of the body including the scapula in the accident and, therefore, he filed claim

petition no.174 of 2005 for award of compensation. The Tribunal found 5% disability on account of fracture of scapula and accordingly, awarded a sum of Rs.25,000/- in all to the appellant.

In our opinion, the amount awarded by the Tribunal is inadequate as the appellant would have incurred a sum of Rs.10,000/- on the medical treatment. It would, therefore, be just and appropriate if the amount of Rs.25,000/- awarded as compensation is increased to Rs.50,000/- which shall include Rs.10,000/- on account of medical treatment. The appellant is, therefore, held entitled to the enhanced compensation along with interest at the rate of 6% per annum from the date of petition till the realisation.

F.A.O.No.883 of 2006

Since appellant-Smt.Mewa sustained injuries in the accident, she filed claim petition no.177 of 2005 and sought compensation. However, before the Tribunal, the appellant failed to establish either the nature of injuries suffered by her or the medical expenses. Therefore, the Tribunal awarded a sum of Rs.2000/- in lump-sum as compensation to her. By way of the present appeal, the appellant has prayed for enhancement of the compensation.

In view of the fact that there is no evidence on record to substantiate the nature of the injuries, the award of the Tribunal seems to be just and adequate and no interference is warranted in so far as the appellant is concerned.

On the basis of the above discussion, F.A.O. Nos. 868, 869, 871, 875, 877, 879 and 882 are allowed in the manner indicated hereinabove, whereas F.A.O. Nos. 870, 872, 873, 874, 878, 880, 881 and 883 of 2006 are dismissed. In so far as the appeals which have been

allowed, the impugned award stands modified accordingly. The liability to pay the enhanced compensation to the claimants-appellants shall be as determined by the Tribunal.

(Mahesh Grover)
Judge

August 31,2006
"SCM"

(Uma Nath Singh)
Judge